

# **EXHIBIT 16**

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September 16, 2015

**BY EMAIL**

Nancy Rue, Esq.  
Assistant United States Attorney  
United States Attorney's Office  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106

Re: *United States v. Devos Ltd., dba Guaranteed Returns, et al.*  
2:14-cr-00574-PBT

Dear Ms. Rue:

I am writing on behalf of our client, Devos, Ltd., as well as defendants Dean Volkes and Donna Fallon. In anticipation of the September 30 hearing on discovery issues, there are several other issues we would like to address prior to the hearing. In this regard, we suggest a telephone conference with you on or before September 21. If any of these issues are unresolved after we confer, we plan to raise them with the Court so that they can be addressed at the hearing.

**1. Documents taken from John Fallon's desk**

The first of these matters was initially brought to your attention in a letter dated May 13, 2015, from my co-counsel, William Komaroff, and relates to the government's acquisition of "company documents" from a cooperating witness ("CW1"), as set forth in the March 29, 2011, affidavit of Special Agent Joanne Woodring in support of the search warrant of the Devos premises that was executed several days later. In Mr. Komaroff's letter, a copy of which is annexed hereto, the defendants requested information bearing on the circumstances under which the government obtained those documents, as well as production of the documents themselves. On June 3, 2015, under a cover letter also attached, you produced to the defendants two documents: a) a typewritten document described as a "note" from Devos "CEO Dean Volkes to [Devos employee] John Fallon" that is referenced in paragraph 26 of Special Agent Woodring's March 29, 2011, affidavit, and b) a "page of handwritten notes obtained from the desk of John Fallon," referenced in paragraph 28 of the same affidavit.

According to paragraph 26 of Special Agent Woodring's affidavit, attached to the "note from CEO Dean Volkes to John Fallon" were "corresponding system printouts with

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handwritten annotations and notes." The government's June 3 production did not include these printouts and notes. Please provide these documents.

Also in Special Agent Woodring's March 29, 2011, affidavit, it suggests that the "note from CEO Dean Volkes to John Fallon" was one of a number of company documents provided to Agent Woodring by CW1. Please confirm that, with the exception of the printouts just mentioned above which we anticipate receiving, the documents attached to your June 3 cover letter are the only company documents provided to Agent Woodring by CW1. If there are others, we would ask you to produce these as well.

Finally, you have not provided us with a response to our requests regarding the circumstances under which the government obtained company documents from CW1. As detailed in the May 13 letter, we believe that the defendants are entitled to know whether the party seizing the documents was acting as an instrument or agent of the government, and that *Brady v. Maryland*, 373 U. S. 83 (1963), and Department of Justice policy, as set forth in the U.S. Attorney's Manual, further require disclosure of such information.

## **2. Sealed documents in the court files of Ronald Carlino and Ryan Kasper**

The second of these matters involves the guilty pleas of two witnesses who evidently have cooperated with the government's investigation. The first witness, Ryan Kasper, pled guilty on February 28, 2012, to four counts of an indictment pending against him. The docket reflects that two documents on that date were sealed, #15, a "plea document" and #16, a "judicial document." We do not have access to these documents, filed with the court in the ordinary course of business using the electronic court document system; nor do we have a reference or apparent access to the guilty plea minutes.

The second witness, Ronald Carlino, pled guilty on May 4, 2015, to four counts of the instant indictment. The docket here reflects the filing of three documents (numbers 70, 71, and 72), all apparently relating to the plea. Once again, we do not have access to these documents filed with the court in ordinary course of business using the electronic court document system; nor do we have a reference or apparent access to the guilty plea minutes.

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Courts have long recognized that in the absence of a compelling interest to keep a document sealed, the public has a general right to inspect and copy public records and documents, including judicial records and documents. Under the circumstances here, we see no such compelling interest, and therefore seek your consent to unseal the docket entries before making a motion to seek such relief. While I anticipate that the government may respond that the defendants will be provided these items later as *Giglio* material, given the general presumption in favor of open court proceedings, it makes no sense that the rights of a criminal defendant to such materials should accrue later than those of the general public.

Before making formal motions, we would like to discuss both of these issues with you in the suggested phone conference. Please let us know when you are available.

Very truly yours,



Douglas E. Grover

cc: William Komaroff, Esq.  
Robert Radick, Esq.  
Ann C. Flannery